

1 Teresa Highsmith, City Attorney (SB# 155262)
2 Donna Mooney, Senior Assistant City Attorney (SB # 189753)
3 Office of the City Attorney
4 2263 Santa Clara Avenue, Room 280
5 Alameda, California 94501
6 Telephone: (510) 747-4750
7 Fax No.: (510) 747-4767
8 Email: dmooney@ci.alameda.ca.us

9 JOSEPH E. WILEY (State Bar No. 84154)
10 IAN P. FELLERMAN (State Bar No. 119725)
11 WILEY PRICE & RADULOVICH, LLP
12 1301 Marina Village Parkway, Suite 310
13 Alameda, California 94501
14 (510) 337-2810
15 FAX (510) 337-2811

16 Attorneys for Defendant
17 CITY OF ALAMEDA

18 Alison Berry Wilkinson (SB# 135890)
19 BERRY WILKINSON LAW GROUP
20 4040 Civic Center Drive, Suite 200
21 San Rafael, CA 94903
22 Telephone/Facsimile: (415) 259-6638
23 Email: alison@berrywilkinson.com

24 Attorney for Plaintiffs
25 Dennis Hart and Ron Miller

26 UNITED STATES DISTRICT COURT
27 NORTHERN DISTRICT OF CALIFORNIA

28 DENNIS HART AND RON MILLER,
Plaintiffs,
v.
CITY OF ALAMEDA,
Defendant.

Case No.: C 07-05845 MMC

**UPDATED JOINT CASE MANAGEMENT
STATEMENT AND PROPOSED ORDER**

Date: July 18, 2008

Time: 10: 30 a.m.

Dept: Courtroom 7, 19th Floor
The Hon. Maxine M. Chesney

1 The parties to the above-entitled action jointly submit this updated Joint Case
2 Management Statement and Proposed Order and request the Court to adopt it as its Case
3 Management Order in this case.

4 Following the Case Management Conference held on March 7, 2008, the parties
5 participated in a mediation session held on May 21, 2008 with Robert Edwards as mediator.
6 Following the mediation session, the parties continued settlement discussions through Mr.
7 Edwards. Unfortunately, the parties thus far have been unable to resolve their differences. As a
8 result, the parties provide this Joint Case Management Statement and request adoption of its
9 Case Management Plan in order to address the liability and damages issues presented by this Fair
10 Labor Standards Act case.

11 1. Statement of the Case

12 a. Plaintiffs' Statement of the Case:

13 The Plaintiffs and all consenting parties are or were members of the Alameda
14 Police Officers Association, which is the duly recognized employee organization
15 representing the non-exempt, rank-and-file employees of the City of Alameda's
16 Police Department. The terms and conditions of employment for the police
17 officers and sergeants represented by the Association are set forth in a binding
18 collective bargaining agreement, which includes an established forty (40) hour
19 work period with paid leave time counting as hours worked. Plaintiffs and all
20 consenting parties contend that the City has failed to properly calculate the
21 "regular rate" of pay for overtime compensation, as that term is defined by
22 Section 207(e) of the Fair Labor Standards Act, because the overtime rate fails to
23 include the following specialty and premium pays: bilingual pay, call back pay,
24 court time pay, field training officer pay, holiday-in-lieu pay, canine pay, and
25 stand-by pay.

26 b. Defendant's Statement of the Case

27 Defendant asserts that its pay practices are in compliance with the FLSA, and that
28 it is entitled to the exemption contained in 29 U.S.C. Sec. 207(k) based on an
established work period of 28 days.

2. Principal Legal Issues In Dispute: During mediation, it became clear to the parties that there are two primary legal issues that significantly impact liability and on which the secondary legal issues related to damages turn. Those issues are:

- a. Whether, as a matter of law, the City is required to include the "holiday in lieu" pay provided for in the applicable collective bargaining agreements in the "regular rate" of pay for overtime compensation as that term is defined by Section 207(e) of the Fair Labor Standards Act.
- b. Whether, as a matter of law, the City is entitled to the exemption contained in 29 U.S.C. Sec. 207(k) based on an established work period of 28 days.

3. Case Management Proposal:

- a. Plaintiffs' Case Management Proposal: Plaintiffs request that the Court set an expedited schedule for hearing cross-motions for summary judgment on the two legal issues set forth in Sections 2(a) and (b) above, i.e., whether "holiday in lieu" pay must be included in the "regular rate of pay for overtime purposes; and whether the City is entitled to the exemption contained in section 207(k). Plaintiffs request that these cross-motions for summary judgment be heard in December 2008, and that the scope of discovery be expressly limited to these two legal issues.
- b. Defendant's Case Management Proposal: The City requests that the Court set a hearing on cross-motions for summary judgment only on the 207(k) legal issue referenced in Section 2(b) above, to be heard in December 2008, and that the scope of discovery be expressly limited to that legal issue.
- c. Joint Proposal: The parties jointly propose that a further case management conference be set for 90 days following the hearing on the cross-motions for summary judgment to determine what, if any, further scheduling is required.

4. Amendment of Pleadings: Plaintiffs request permission to amend the pleadings to include the non-sworn members of the Police Department who are also represented by the Alameda Police Officers Association.

Date: July 11, 2008

/ s /

Alison Berry Wilkinson
Attorney for Plaintiffs

1
2 Date: July 11, 2008

/ s /

3 _____
4 Ian P. Fellerman
5 Attorney for Defendant

6 **CASE MANAGEMENT ORDER**

7 The Case Management Statement and Proposed Order is hereby adopted by the Court as the
8 Case Management Order for the case and the parties are ordered to comply with this Order.

9 In addition, the Court orders that:

- 10 1. Cross-Motions for Summary Judgment on the issue presented in Section 3, above,
11 are hereby set to be heard on _____.
12 2. A further case management conference is scheduled for _____, 2009,
13 with an updated joint case management statement to be filed by the parties on or
14 before _____, 2009.

15 Date: _____

16 _____
17 MAXINE CHESNEY
18 United States District Court Judge
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PROOF OF SERVICE

Case Name: *Dennis Hart and Ron Miller v. City of Alameda*
United States District Court for the Northern District of California
Case No.: C 07 5845 MMC

I, Maggie Bedig, am a citizen of the United States, and am over 18 years of age. I am employed in Contra Costa County and am not a party to the above-entitled action. My business address is Rains Lucia Stern, PC, 2300 Contra Costa Blvd., Suite 230, Pleasant Hill, California 94523. On the date set forth below I served a true and correct copy(ies) of the following document(s):

UPDATED JOINT CASE MANAGEMENT STATEMENT AND PROPOSED ORDER

upon all parties addressed as follows:

Teresa Highsmith, City Attorney
Donna Mooney, Senior Asst. City Attorney
Office of the City Attorney
2263 Santa Clara Ave., Room 280
Alameda, CA 94501
Facsimile: 510-747-4767
Email: dmooney@ci.alameda.ca.us


Joseph E. Wiley, Esq.
Ian P. Fellerman
Wiley Price & Radulovich
1301 Marina Village Parkway, Suite 310
Alameda, CA

said service was effected as indicated below:

- ☐ HAND DELIVERY- I placed true and correct copies of the above-referenced document(s) in a sealed envelope, addressed to the above-named parties, and personally delivered them.
- ☐ FACSIMILE TRANSMISSION- I caused true and correct copies of the above-referenced document(s) to be delivered by electronic facsimile transmission.
- ☐ MAIL – I placed true and correct copies of the above-referenced document(s) in a sealed envelope, properly addressed to the above-named parties, with postage prepaid in a receptacle regularly maintained by the United States Post Office.

☒ VIA ELECTRONIC MAIL: I attached a true and correct copy thereof in PDF format to an electronic mail message transmitted to the electronic mail address indicated above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and was executed on July 11, 2008 at Pleasant Hill, California.


Maggie Bedig

PROOF OF SERVICE